

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff, Case No. 19-20652
-vs-
JAMES LETKO, Detroit, Michigan
Defendant. October 1, 2019

TRANSCRIPT OF ARRAIGNMENT and INITIAL HEARING
BEFORE THE HONORABLE R. STEVEN WHALEN
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For the Government: **Malisa Chokshi Dubal**
U.S. Department of Justice, Fraud Section
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For the Defendant: **David F. DuMouchel**
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UNITED STATES OF AMERICA v. JAMES LETKO
ARRAIGNMENT and INITIAL HEARING

1 Detroit, Michigan

2 Tuesday, October 1, 2019

3 (At about 1:47 p.m.)

4 - - -

5 (Call to Order of the Court)

6 THE CLERK OF THE COURT: Calling case number 19-20652,
7 United States of America of versus James Letko.

8 MS. DUBAL: Malisa Dubal on behalf of the United
9 States. Good afternoon, Your Honor.

10 MR. DuMOUCHEL: Good afternoon, Your Honor. David
11 DuMouchel on behalf of James Letko who is on my left.

12 THE COURT: Good afternoon. Mr. Letko, you are here
13 to be arraigned on an Indictment that charges you with
14 Conspiracy to Commit Health Care Fraud and Wire Fraud. If you
15 were convicted or pled guilty to this charge, you'd be subject
16 to a maximum sentence of 20 years in prison, a fine of up to
17 \$250,000 or both.

18 You have received a copy of this Indictment, is that
19 right?

20 MR. LETKO: Yes, I have.

21 THE COURT: And did you have the opportunity to
22 discuss this matter with Mr. DuMouchel?

23 MR. LETKO: Yes I have, Your Honor.

24 THE COURT: Very good. Mr. DuMouchel.

25 MR. DUMOUCHEL: Your Honor, we'd waive the reading of

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1 the Indictment and Mr. Letko will stand mute.

2 THE COURT: I'll enter a plea of not guilty on the
3 Defendant's behalf.

4 I do have a Pretrial Services Report that recommends an
5 unsecured bond with a number of conditions. Any objection?

6 MS. DUBAL: Your Honor, the United States do have some
7 additional conditions to those that are listed here.

8 THE COURT: Sure.

9 MS. DUBAL: As well as a modification to number eight,
10 and so the United States would ask that Mr. Letko not open any
11 bank accounts in his or his family members' name unless notice
12 is first given to Pretrial Services as to the location of that
13 bank and whose name the bank account is in or any signatories.

14 THE COURT: I didn't hear the last thing you said.

15 MS. DUBAL: I said or any signatories on the account.

16 THE COURT: Anything else?

17 MS. DUBAL: Yes, Your Honor. And then as to the no
18 health care billing, United States would ask that that
19 condition be no direct or indirect billing to the Medicare
20 Program and that he doesn't cause any billing either to the
21 Medicare Program.

22 THE COURT: As opposed to private insurance.

23 MS. DUBAL: Yes.

24 THE COURT: Which you have no problem with.

25 MS. DUBAL: Correct.

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1 THE COURT: Mr. DuMouchel.

2 MR. DuMOUCHEL: Your Honor, I'd like to respond. I
3 don't have any objection to the 10,000 unsecured bond, and I
4 don't have any problem with turning over Mr. Letko's passport.
5 Beyond that I have some concerns about the requested
6 conditions.

7 With regard to not opening any bank accounts without
8 approval -- and this was going to go to the other arguments as
9 well. Two years ago Mr. Letko's business was raided. In the
10 interim, the company has instituted significant compliance
11 programs, has been very mindful of the rules and regulations
12 under which it is to operate.

13 THE COURT: Is that the A1C Holdings?

14 MR. DuMOUCHEL: Yes, Your Honor. At that same time,
15 the Government seized the bank accounts of the business.
16 They're still restrained two years later. This morning Mr.
17 Letko's personal bank accounts were restrained, so he doesn't
18 have access to that money either. At some point he will need
19 to open some access to funds.

20 I understand and I don't have a problem with Ms. Dubal's
21 request that Pretrial Services be advised of his opening of
22 bank accounts, but I want to be clear that we would be seeking
23 the opportunity to open bank accounts. He's got five kids and
24 they're going to need to get some money. So but with that
25 condition, notifying Pretrial Services what bank it is and so

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1 on, so with that I'm okay. What I'm not okay with is the
2 inability to bill Medicare or other health insurance programs.

3 I was here when you also addressed that same concern with
4 Mr. Lazeki. Ms. Dubal will point out when I'm finished that
5 there's a difference between those two people, and there is.
6 Mr. Letko still is at that business, acting CEO in all of his
7 business which is different than Mr. Lazeki who is no longer
8 there. I understand that --

9 THE COURT: (Interjecting) Let me just interrupt with
10 questions. I just perused the Indictment and according to the
11 Indictment of the -- it's called the Pharmacy Benefit Managers
12 approval --

13 MR. DuMOUCHEL: Yes, Your Honor.

14 THE COURT: The Medicare payments are processed
15 suspended to contract. Is that still the case?

16 MR. DuMOUCHEL: Yes, Your Honor.

17 THE COURT: So how can he bill?

18 MR. DuMOUCHEL: Correct it.

19 MR. LETKO: We have contracts with over five
20 pharmacies and we have contracts with most of the major PBMs.

21 MR. DuMOUCHEL: All of which, all of which business
22 has undergone numerous audits in the last two years and there
23 have been no problems with any of them.

24 There's also some hundred employees of A1C and its
25 pharmacies. The pharmacies individually the Pharmacists take

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1 care of, but the overall company is Mr. Letko's company and
2 while he doesn't --

3 THE COURT: (Interjecting) So just so I understand
4 this. So an individual pharmacy that's affiliated with a
5 larger group would submit its own billings?

6 MR. LETKO: The Pharmacists adjudicate the claim
7 (inaudible) yes, Your Honor.

8 THE COURT: Okay, but who submits the billings to
9 Medicare and Medicaid?

10 MR. LETKO: The PBM.

11 THE COURT: Who submits to the PBM, the individual
12 Pharmacist or A1C?

13 MR. LETKO: The Pharmacist pushes a button to
14 adjudicate a claim and then the PBM basically processes that.

15 THE COURT: I guess my question is this. What do you
16 or A1C have to do with billing or causing a billing to be made
17 to Medicare and Medicaid?

18 MR. LETKO: I just assume since I'm an owner and I'm
19 the owner of the pharmacies that I do not want to be
20 responsible. I'm indirectly in here, so I want to make sure my
21 business can function.

22 THE COURT: I don't know if that answers the question.
23 It sounds to me -- and maybe I'm missing something here -- but
24 if I order that you don't bill or cause to be -- have any bills
25 submitted to Medicare or Medicaid, that's not going to have any

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1 effect on your business.

2 MR. LETKO: Absolutely it will be.

3 THE COURT: How?

4 MR. LETKO: We have a second line of business; it's
5 called the Medicare Part B business. We have been a bid winner
6 since 2013. We currently have 45,000 customers that we submit
7 billings to.

8 THE COURT: So you do submit billings?

9 MR. LETKO: Yes. So there's two different areas of
10 the business. There's one that's my Pharmacists press a button
11 and I guess they directly submit the bill and then there's the
12 second line of business which is the Durable Medical Equipment
13 business where my name is on all the paperwork.

14 THE COURT: And that's strictly related to Durable
15 Medical Equipment?

16 MR. LETKO: Correct, which is not a -- not related to
17 this case.

18 THE COURT: Go head.

19 MR. DuMOUCHEL: Your Honor, I have two responses.
20 One, and I understand Your Honor's question was for
21 information. Mr. Letko's concern is we don't want to be seen
22 as indirectly causing billing, so that's our concern --
23 directly or indirectly.

24 Here, however, as I mentioned, two years ago -- compliance
25 programs have been in place for the last two years. There's no

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1 allegations in this Indictment of anything happening since that
2 time. We realize there's a lot of answers to that.

3 THE COURT: So for the last two years a compliance
4 program has been in effect and he's been --

5 MR. LETKO: (Interjecting) The compliance program
6 actually went into place in 2013 when I --

7 THE COURT: (Interjecting) What I'm saying though is
8 since that compliance -- what I'm asking is since that time,
9 there have been audits?

10 MR. LETKO: We've been audited prior to the raid and
11 after the raid. We've been audited for years and we --
12 basically we've done very well with those audits and then
13 there's some talk about terminations of Agreements and
14 everything, but we actually had to fight and I had several
15 lawsuits with the PBMs and at this point, none of those
16 lawsuits have ended against me. I've done settlements and
17 I've --

18 THE COURT: (Interjecting) Well, I'm not -- having a
19 lot of lawsuits is not something that's giving me a lot of
20 confidence, so maybe you should let your attorney talk.

21 MR. LETKO: No, I understand.

22 MR. DuMOUCHEL: Let me just -- and I know this is
23 repeating a little bit. Mr. Letko is represented by Counsel,
24 not just me but other lawyers, who actually help with the
25 business. He's not going to do anything when he knows that the

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1 Government's looking, has been looking, is going to continue to
2 look. He's not going to do anything that number one would
3 violate a rule of this Court. These Court orders -- I don't
4 say this to be patronizing -- mean something and they're
5 ordered not to submit any false billings, not going to submit
6 any false billings and there's no need to prevent him and his
7 business from operating and putting all these people out of
8 work. There's just no point in that at all.

9 Now I understand. Could something get through before the
10 Government finds it? Sure. True in every case. There's no
11 need and it's just counterproductive here to put 45,000
12 patients who need their diabetes medications out and he's not
13 going to do anything wrong here. It's not going to happen, and
14 I would urge -- urge overstates it -- request in this case that
15 no such restriction be placed on Mr. Letko.

16 THE COURT: Your turn.

17 MS. DUBAL: Thank you, Your Honor.

18 THE COURT: Let me start with maybe what's the easy
19 part first which is on the opening of bank accounts. Mr.
20 DuMouchel says you know, he's fine with notifying Pretrial if
21 an account is open, but he doesn't want pre-approval. What's
22 your position?

23 MS. DUBAL: Notification is fine, Your Honor. I don't
24 have a problem with that.

25 THE COURT: Then let's move on to the billing.

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1 MS. DUBAL: Okay. So, Your Honor, just to give you a
2 little bit of background about this case beyond what's actually
3 in the Indictment. So Mr. Letko specifically, he's the CEO of
4 A1C Holdings. A1C Holdings is the parent company of a number
5 of subsidiary companies, and so you have A1C Holdings at the
6 top and underneath that you have a number of subsidiary
7 holdings, about 10 or so I would say an estimate, about 10 to
8 12 and those holding companies, none of those holding companies
9 are in Mr. Letko's name.

10 Underneath the holding companies are all of the
11 pharmacies, the retail pharmacies or purported retail
12 pharmacies and none of those retail pharmacies with the
13 exception of All American Medical Pharmacy are in Mr. Letko's
14 name.

15 THE COURT: So just so I'm clear, if one of those
16 individual retail pharmacies were to bill Medicare/Medicaid,
17 that would have nothing to do with Mr. Letko?

18 MS. DUBAL: No. It absolutely has to do with Mr.
19 Letko because those pharmacies sit underneath A1C Holdings, the
20 corporate entity.

21 THE COURT: If they're acting independently --

22 MS. DUBAL: Yes, I'm sorry. I interrupted Your Honor.
23 Go head.

24 THE COURT: That's my question. So acting
25 independently I'm unclear even if there's some --

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1 MS. DUBAL: (Interjecting) Sure. Let me clarify that
2 then. They're not acting independently. All of these
3 pharmacies are purportedly retail pharmacies, but they're in
4 fact functioning as mail order pharmacies and it was at Mr.
5 Letko's direction that these pharmacies were specifically put
6 -- they were -- the individuals whose names that are on that
7 paperwork, it was specifically directed by Mr. Letko to make
8 sure that his name was not on that paperwork because Mr. Letko
9 was concerned that if the PBMs or if Medicare were to find out
10 that his name was on that paperwork, that they would not either
11 contract with him or that they would initiate an audit or an
12 investigation and that is a result of a civil investigation --
13 I'm sorry -- a civil settlement that took place with Mr.
14 Letko's brothers back in 2016.

15 And so as a result of that, it was at Mr. Letko's
16 direction that all of these retail pharmacies were purchased by
17 him. He's the one that goes to the site, visit or sends an
18 individual within his company to make site visits to identify
19 under-performing pharmacies or find areas to create new
20 pharmacies. And then once those pharmacies are purchased or
21 traded by Mr. Letko, after that they will send patients
22 expensive medications or diabetic testing supplies and now
23 while at the -- and this is by mail order. All of these
24 pharmacies have very little if any retail business whatsoever.

25 So the Pharmacists that are working at those pharmacies,

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1 Pharmacists in charge and the staff, while they may be looking
2 in the computer and processing what's happening in the
3 computer, all of the billing and the IT and things like that
4 are happening at Global Health Care which is Mr. Letko's
5 brother's company that they share services with. A1C Holdings
6 shares billing services with Global, which by the way, the
7 District of New Jersey is investigating Global Health Care for
8 a very similar type of an investigation involving a very
9 similar type of fraud.

10 And so any billing that is happening at any of those
11 pharmacies whatsoever are at Mr. Letko's direction; is at his
12 direction that medications were being sent to patients without
13 their consent and that were unnecessary. It was his direction
14 that patients were -- there was absolutely no attempt by any of
15 the retail pharmacies to collect any type of co-pays which
16 induced these elderly Medicare patients who are also in some
17 cases disabled to accept medications and not initiate returns
18 and we have emails as well as documents and witness testimony
19 to support that more specifically, and a grand jury returned an
20 Indictment finding as such as is -- some of which is outlined
21 in the manner and means of the Indictment itself. So Mr.
22 Letko's directly involved with the billing and causing billing
23 to the Medicare Program.

24 Furthermore, the way in which these retail pharmacies were
25 acquiring their patient base was exactly from what Mr. Letko

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1 just mentioned which is his DME business. So the DME business
2 is billed through the Part B side of Medicare and pharmacy is
3 billed through the Part D side. And so some time in 2013,
4 reimbursement for the diabetic testing supplies decreased
5 pretty dramatically from the Part B side. And so at Mr.
6 Letko's direction, and when we have witness testimony to
7 support this, it was at Mr. Letko's direction that there was a
8 shift and a direction for A1C Holdings to direct all of their
9 pharmacies to start billing through the Part D as in dog
10 program and so Mr. Letko's involvement with the Medicare
11 Program, both a Part D and Part B prospective is -- he's
12 causing billing directly as well as indirectly to the program.

13 And then lastly, Your Honor, I would say that as far as
14 the Part B is concerned, Mr. Letko is also well aware of an
15 investigation in the Southern District of Georgia where
16 they're investigating his involvement with a DME company that
17 he's also an owner of.

18 And so in terms of trying to mince hairs in terms of his
19 involvement with the Medicare Program, Mr. Letko's directly
20 involved with all of it and this is an 80 million dollar fraud,
21 and while Mr. DuMouchel has represented that after the search
22 warrant they implemented this compliance -- I will note that
23 Mr. Letko himself stated that their compliance program was in
24 place in 2013 and if you'll note, the timeframe of the
25 Indictment, Your Honor, was in -- began in 2013 and continued

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1 until October of this year.

2 But furthermore, two years ago once the search warrant was
3 actually executed. Since then Mr. Letko has opened up new
4 pharmacies and in other individuals' names and he's taken
5 patients from any of the pharmacies that lost PBM contracts and
6 he's shifted them over into these new pharmacies. Again,
7 pharmacies where his name is nowhere on any of that PBM
8 paperwork; pharmacies where his name is not on the corporate
9 paperwork. They're all purportedly owned by these holding
10 companies which are essentially shell companies that are then
11 owned by A1C.

12 So really the level of complexity and the amount of steps
13 that Mr. Letko has repeatedly taken over the course of not only
14 the timeframe of the Indictment, but by his own account his
15 involvement with the Part B side as well, it would be nearly
16 impossible for the United States to be able to prevent him from
17 you know, causing false billings to the Medicare Program.

18 THE COURT: Let me ask you a question. You said it's
19 continued through this year. The Indictment alleges continuing
20 -- that the conspiracy is continuing through around the end of
21 2018. So my question is between the end of 2018 -- it's a
22 two-part question -- between the end of 2018 and now in this
23 case has there been any further investigation or any further
24 indication of false billings by any of these entities?

25 MS. DUBAL: Your Honor, the investigations ongoing.

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1 THE COURT: You mentioned an investigation in Georgia?

2 MS. DUBAL: There's two investigations; one in the
3 District of New Jersey and one in the Southern District of
4 Georgia.

5 THE COURT: And those are both Federal investigations
6 in two other Districts?

7 MS. DUBAL: Yes, sir.

8 THE COURT: Are there Indictments out of those
9 jurisdictions or just ongoing investigation?

10 MS. DUBAL: Ongoing investigation.

11 THE COURT: Okay. Mr. DuMouchel, I'll give you a
12 chance to respond. I mean it sounds like we've got fairly
13 complex corporate structure which quite frankly always raises
14 eyebrows, and we have two independent investigations going on
15 of these companies. So --

16 MR. DuMOUCHEL: I understand all of that, and I don't
17 want to be disrespectful to Miss Dubal at all, but there's a
18 part of me that wants to say so what? Those allegations if
19 they are will be defended. With all respect, that's not why
20 we're here. The concern is --

21 THE COURT: (Interjecting) Exactly. I'm not deciding
22 guilt or innocence, but I do have to decide whether there are
23 conditions that would reasonably assure that there's not going
24 to be any other or any -- I won't say any other -- but any
25 illegal activity.

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1 MR. DuMOUCHEL: No, I understand and I think that in
2 the intervening past two years the fact that there's an
3 investigation you know, okay. There's an investigation. There
4 haven't been charges arising out of there. If there are, there
5 will be. Certainly Mr. Letko is well aware that he's being
6 looked at, that everything he's doing is being looked at. He's
7 not going to do something to violate this Court's Order,
8 jeopardize his bond, get himself charged with something else,
9 get himself charged with violating bond conditions. It's not
10 going to happen. If it does, there's recourse to it.

17 MR. DuMOUCHEL: No, Your Honor. I don't think that's
18 the case and I think that just as Miss Dubal has pointed out,
19 there are ways -- the Government is aware of those, can unwind
20 those if they need to be unwound.

21 THE COURT: Apparently they're unwinding them in
22 Georgia and Missouri -- New Jersey.

23 MR. LETKO: New Jersey is nothing. New Jersey is --

24 THE COURT: (Interjecting) Let your attorney speak.

25 MR. DuMOUCHEL: If they do, they do. That hasn't

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1 anything to do, I submit, with regard to a bond condition that
2 puts the company out of business today. And they want to get
3 an Injunction against him submitting things to Medicare, they
4 can do what they're going to do, but as a condition of bond
5 based on this case, that's just not right to put this company,
6 already seized the accounts from that, seized his personal
7 accounts today and now effectively put the company out of
8 business based upon a pending charge where he's presumed to be
9 innocent.

10 The Government, United States will be well protected by
11 the Court Order that he not submit any illegal false Medicare
12 billings. That will be a condition of bond in addition to a
13 statute, be a condition of bond which the Court can respond to
14 at that time.

15 THE COURT: Tell me again how many people work for
16 this -- these aggregate corporations that you say would be put
17 out of business approximately.

18 MR. LETKO: Between 90 and a hundred as of today.

19 THE COURT: Okay. So let me ask you this. This is a
20 balancing act I have to do here, and it appears that if I
21 impose the condition of no billing, of no billing, that that's
22 a significant part of their business. They're out of business;
23 90 to a hundred people are out of work.

24 On the other hand, Mr. DuMouchel says more less
25 paraphrasing what I said in the other case, you know if you do

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1 submit false billings while you're under supervision and while
2 you're under Indictment, you know that's really pretty risky
3 business. So on balancing the effect it would have not only on
4 his livelihood but on the livelihoods of apparently 90 to a
5 hundred people versus the likelihood or the protection that
6 would be imposed by him being under court supervision, how do I
7 make that balance?

8 MS. DUBAL: Your Honor, if I could just comment
9 briefly. The impact of Mr. Letko's actions on the United
10 States taxpayer in a short amount of time was an 80 million
11 dollar payout by the Medicare Program and that was 100% as a
12 result of Mr. Letko's actions. Full stop. And it would be
13 virtually impossible -- and this Defendant is distinguishable
14 from Mr. Burdick's client, Mr. Lazeki because Mr. Letko has
15 taken so many steps to conceal his involvement with the
16 Medicare Program and billing to the Medicare Program and
17 causing billing to the Medicare Program that it would be
18 literally virtually impossible for the United States to be able
19 to stop Mr. Letko. We'd be in a position where we wouldn't be
20 able to stop him until millions of dollars would probably go
21 out the door again. 80 million dollars in less than about four
22 and a half years, that's a significant amount being paid out of
23 the Medicare Program as a result of Mr. Letko's actions and so
24 it would be virtually impossible versus a mom and pop pharmacy
25 here in Michigan where they simply don't have that type of

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1 volume.

2 Mr. Letko has pharmacies all over the country, and when he
3 is -- when he has been shut down and a PBM did find out that he
4 was involved in activities that he shouldn't have been involved
5 in and violated the PBM contracts or violated CMS regulations,
6 Medicare regulations, he just shifted his patients over to his
7 brother's company so they could be serviced by his pharmacies
8 over there. So Mr. Letko is literally willing -- he's done
9 almost anything to conceal his ownership and insure that he
10 still gets that bottom line payout.

11 And so while I do understand the importance of balancing,
12 Your Honor, in this circumstance I think that it is a unique
13 circumstance given Mr. Letko's position as the CEO and the
14 magnitude and severity and complexity of his conduct during the
15 relevant timeframe of this Indictment.

16 THE COURT: Okay. Let me start with -- I'll tell you
17 the conditions, but let me start with this last condition which
18 is at issue which is a request that I impose a condition that
19 you not bill or cause to be billed to Medicare/Medicaid or any
20 other Government health program.

21 I do see your position and this is without any derogation
22 to the presumption of innocence. I'm not trying the case, but
23 one of the factors that I do have to look at under the Bail
24 Reform Act is the seriousness of the offense, the strength of
25 the Government's proofs, the type of offense as well as your

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1 personal characteristics and that includes your business
2 practices. I have to look at all of that.

3 As the Government points out, this is what, 80 million
4 dollars, a hundred million dollars case? This is a lot of
5 money that's charged all right? I'm not trying you right now,
6 okay? That will come later.

7 MR. LETKO: It's a big company.

8 THE COURT: It's a big company and it's not only a
9 big company, but it's a company that has a very labyrinthine
10 structure. You have subsidiaries and sub-subsidiaries that
11 you're at the top of the pyramid, okay?

12 You have -- in addition to these charges, you have two
13 other Federal investigations going on, one in Georgia, one in
14 the District of New Jersey. Those haven't ripened into an
15 Indictment yet and they may not. I don't know, but -- I'm
16 speaking, okay? We have investigations going on.

17 You've -- not only do we have the seriousness of the scope
18 of the charges, but we have a corporate structure that is set
19 up that I'm not even sure at this point whatever your
20 intentions are you even have control over what's going to be
21 billed and what is not going to be billed.

22 Given all of the circumstances and I am concerned about
23 these other employees, but given the scope of the charged
24 conspiracy, given the amount of money and the amount of
25 activity alleged, given the corporate structure and I do accept

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1 the Government's argument that if there were some kind of false
2 billing somewhere in this tangled knot of companies, it would
3 be difficult to faret that out.

4 I also appreciate Mr. DuMouchel's argument and I mentioned
5 this in the last case, that you got to be pretty stupid to
6 continue or to participate in illegal activity while you're
7 under supervision, but my job and the scope of my decision is
8 to determine if -- what conditions would reasonably assure the
9 safety of the community and that would include ensuring against
10 false billings, and on balance, I find that the condition that
11 you not bill or cause to be billed any Government health care
12 programs, Medicare/Medicaid, et cetera, is a condition that is
13 necessary to give me that reasonable assurance. So I'm going
14 to include that condition among the conditions.

15 So let me run over the conditions. It's \$10,000 unsecured.
16 You'll report as directed to Pretrial Services. Your travel is
17 restricted to the continental United States.

18 MS. DUBAL: Your Honor, if I may just comment about
19 the travel restriction?

20 THE COURT: Yes.

21 MS. DUBAL: I had spoken to -- Mr. DuMouchel made
22 reference to another counsel that's also working with Mr. Letko
23 prior to the hearing, and we had agreed that the travel would
24 actually be restricted to the state of New Jersey. However, if
25 Mr. Letko wanted to travel within the continental United States

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1 for business purposes, he would notify Pretrial Services as
2 well as myself and let us know what business entity he was
3 going to have --

4 THE COURT: (Interjecting) You're saying travel
5 District of New Jersey, Eastern District of Michigan for court.

6 MS. DUBAL: Yes.

7 THE COURT: Any other business travel with Pretrial
8 notification or permission.

9 MS. DUBAL: With Pretrial and United States
10 notification.

11 MR. DuMOUCHEL: Your Honor, it's a tough one when
12 you've got two lawyers who apparently aren't on the same page,
13 not as (inaudible) but other Defense Counsel. If that's what
14 he said, that's what he said. But for example, Mr. Letko has a
15 daughter in college in Florida and I don't think he should be
16 precluded --

17 THE COURT: (Interjecting) Let me tell you something.
18 I've read the Pretrial Services Report which indicates that
19 Defendant poses a risk of nonappearance because he possesses a
20 passport. He'll turn his passport in. I don't see reading
21 this Report and I haven't heard anything that indicates to me
22 that there would be any other conditions that would cause me to
23 think he's a flight risk. I'll limit it to the continental
24 United States.

25 MR. DuMOUCHEL: Okay with me, but I don't want to say

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1 something inconsistent.

2 THE COURT: Well, I don't know. I've got to make the
3 decision. I'm looking at the Report. He can't leave the
4 country without a passport and he can't leave the country
5 unless he gets not Pretrial's permission, my permission.

6 MS. DUBAL: If I may to make a record.

7 THE COURT: Go head.

8 MS. DUBAL: The reason for the restriction in terms of
9 notifying Pretrial Services as well as the United States
10 outside of travel to New Jersey is because of all the different
11 businesses that he has throughout the country, and it's to
12 insure that if he is opening up any new entities or if he is
13 visiting any entities, the United States is made aware of those
14 contacts.

15 THE COURT: He doesn't have to leave the state to open
16 up a new entity in some other state.

17 MS. DUBAL: Okay.

18 THE COURT: I'll tell you what. Let me start from the
19 beginning so that we're all real clear. Please feel free to
20 interrupt me if I misstate anything.

21 Report as directed, 10,000 unsecured. You'll report as
22 directed to Pretrial Services. Your travel is restricted to
23 the continental United States. And I'll tell you what; you
24 don't have to get permission to go to another state, but you'll
25 notify Pretrial Services if you're going to do that. Got that?

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1 MR. LETKO: Thank you, Your Honor.

2 THE COURT: You'll surrender your passport to Pretrial
3 Services by 4:00 p.m. October 2nd -- and that's tomorrow -- any
4 passports that you have and you will not apply for or obtain
5 any new passports or any other internal travel documents such
6 as for example an enhanced driver's license.

7 Submit to a one-time drug test. If that's negative, there
8 will be no further testing. If it's positive, such further
9 testing and/or treatment as directed by Pretrial Services.

10 Okay. You're not to have any contact with any alleged
11 victims, any witnesses or any co-defendants unless in the
12 presence of counsel or through your counsel in order to prepare
13 your defense, and that would include if you have a joint
14 defense situation and there's a meeting with counsel, it's not
15 a problem. Yes.

16 MR. DuMOUCHEL: On that condition, on that one, I'd
17 ask that that not be included. A number of these people or
18 several of these people work for Mr. Letko. They need to have
19 conversations about the day-to-day business. I don't know what
20 we're --

21 THE COURT: (Interjecting) They're his employees?

22 MR. DuMOUCHEL: Yes. Can we say --

23 THE COURT: I'll tell you what I'll do. No contact
24 with any alleged victims, witnesses or co-defendants except
25 number one, the presence of your counsel in order to prepare

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1 your defense or number two, for business purposes.

2 MR. DuMOUCHEL: That's fine. Thank you.

3 THE COURT: And as I indicated, no billing direct or
4 indirect of any Government health care program. Now --

5 MR. DuMOUCHEL: Your Honor, may I --

6 THE COURT: (Interjecting) Hang on one second. We've
7 had a lot of discussion -- it's almost like a detention
8 hearing, although the issue wasn't detention. The issue is
9 what the conditions are. So this is Judge Lawson's case.

10 MR. DuMOUCHEL: Yes.

11 THE COURT: And I'll say this to both parties.

12 Anything that I've ordered that any of you disagree with, you
13 can appeal de novo to Judge Lawson and take it up with him. If
14 I'm wrong, if he says I'm wrong, I'm at peace with that. If he
15 says I'm right, I'm at peace with that also.

16 Okay, anything else for the record?

17 MR. DuMOUCHEL: Yes. I don't know quite how I'm going
18 to suggest this, but I'll think of something. The nonbilling
19 of Medicare, can we make -- I'm not going to reargue that here,
20 probably will do so though -- can we make that condition
21 effective at a later date like 90 days from now? We're
22 probably going to have to transition his business. Otherwise,
23 the things going to close and people will be out of work. The
24 interest is to keep Mr. Letko out of billing. If we can make
25 that condition down the road so that in the meantime we can do

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1 whatever we have to do to hope the business continues without
2 him --

3 THE COURT: (Interjecting) Do you have receivables
4 right now?

5 MR. DuMOUCHEL: Pardon?

6 THE COURT: Does he have receivables right now?

7 MR. LETKO: Yes. Just have patients that won't get
8 their supplies. (Inaudible)

9 THE COURT: They'll get it somewhere else, but I
10 actually -- what you're suggesting crossed my mind and the
11 reason it crossed my mind was my concern for these 90 or a
12 hundred people who are out there. So if I put a condition that
13 effective 90 days from now, 60 days from now --

14 MS. DUBAL: Your Honor, one large aspect of this
15 fraudulent scheme which is one of the paragraphs within the
16 manner and means of the Indictment is that Mr. Letko's -- at
17 Mr. Letko's direction, patients were simply transferred over to
18 his brother's company so that his brother's company could then
19 continue to bill those exact patients and his brother's company
20 is the very subject of the District of New Jersey
21 investigation.

22 THE COURT: So his brother's company is not directly
23 involved in this Indictment, am I right?

24 MS. DUBAL: His brother's company is referenced in
25 this Indictment, Your Honor.

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1 THE COURT: Are they charged? Anybody in that --
2 MS. DUBAL: (Interjecting) No. It's an ongoing
3 investigation in the District of New Jersey, but 90 days, 60
4 days, 30 days is more than enough time for Mr. Letko to simply
5 transfer those patients over to another Letko-owned business to
6 one of his brothers and then continue to get -- obtain
7 ill-gotten gains. That is the Government's position, Your
8 Honor, and he consistently did that and it was a matter of
9 transferring those patients by a click of a button. That's how
10 quickly --

11 THE COURT: (Interjecting) If he does that, if he does
12 that, then he's a co-conspirator in the New Jersey case.

13 MS. DUBAL: He already is a co-conspirator.

14 THE COURT: He already is a co-conspirator.

15 MS. DUBAL: Well, he would be because he's already
16 transferred patients to his brother's company. My argument
17 goes back to the complexity and the level at which -- the steps
18 that Mr. Letko took in order to conceal this fraud and make
19 sure (inaudible)

20 THE COURT: What about the receivables that he's got
21 out there right now? Things that have already been billed,
22 there's nothing I can do about that.

23 MS. DUBAL: Sure. Yeah, I agree there's nothing that
24 can be done about that, but I'm talking about additional
25 billing to the Medicare Program, Your Honor, or causing billing

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1 to the Medicare Program.

2 THE COURT: Then let me ask you. I think -- doesn't
3 that answer your concern? I mean you got receivables. You
4 have a business. You have employees. If he stops billing
5 today, how is that going to effect those employees as opposed
6 if he keeps billing for the next three months? I mean I'm not
7 sure what the marginal advantage is to --

8 MR. DuMOUCHEL: To getting 90 days to transition a
9 business? The company will be able to bill for the next 90
10 days. He can try to -- in the meantime the business can stay
11 alive. Business can be run, and he can transition the business
12 and transition himself out of that position and these people
13 don't get laid off or let go.

14 THE COURT: I don't want to get too deeply into what
15 the financial situation of the business is, but they've got
16 receivables. They've got capital I assume, that they can wind
17 up with -- wind up the business. He's got 85% he says of his
18 business is Medicare and Medicaid. Presumably this 15% in
19 private insurance, he can continue that. I'm not convinced
20 that it's going to -- I mean I don't know. I don't know what
21 it's going to do to the business.

22 MR. LETKO: It's about 98% --

23 THE COURT: (Interjecting) Well, it was 85, now it's
24 98. You should really talk to your attorney before you speak.
25 It's really a good idea.

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1 MR. LETKO: Are you sure --

2 THE COURT: (Interjecting) Are you listening to me?

3 MR. LETKO: Sorry.

4 THE COURT: Sorry. I don't know if I reminded you
5 that anything you say other than what you say privately to your
6 attorney can be used against you in court, so not a good idea
7 to talk, am I right?

8 MR. DuMOUCHEL: It's a significant number, yes. I've
9 got the note saying 95%. Whatever it is, it's a significant
10 number and that would give us time. So this whole --

11 THE COURT: (Interjecting) I mean the Government says
12 he's going to use the time to transfer the patients to his
13 brother's business.

14 MR. DuMOUCHEL: Yeah, we've heard that; that he's
15 going to do all these bad things that will cause problems.
16 Well, he's not going to do any of them and they're making it
17 very clear how much they're looking and somehow this
18 labyrinthine network, somehow they figured it now and he's well
19 aware of what's going on here and he's not going to go out and
20 do something. Your Honor points out in a question would that
21 make him a co-conspirator. We'd rather not do that. Would it?
22 Might. Is he going to do something that would make him that?
23 No. He's ordered by a condition of bond not to violate laws.
24 He's got 90 days if he has to, to try to get out of this to
25 keep these people there.

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1 THE COURT: I'll tell you what. I'll give him 30 days
2 to wind up his business.

3 MR. LETKO: Thank you.

4 THE COURT: The condition that he not bill any
5 Government agency will take effect 30 days from today and Mr.
6 Letko, I don't even need to tell you, but I'll tell you anyway.
7 Really really really bad things are going to happen to you if I
8 find out or if the Government finds out that you're violating
9 any of these conditions, much less the condition that you're
10 engaged in any fraudulent activity.

11 MR. LETKO: I understand, Your Honor. Thank you, Your
12 Honor.

13 MR. DuMOUCHEL: Thank you, Your Honor.

14 THE COURT: Anything else?

15 MS. DUBAL: When you went through the bond conditions
16 you were just summarizing what we've discussed here today, I
17 don't think I heard you say, so I want to clarify the bond
18 condition related to the bank accounts.

19 THE COURT: Thank you. I did not -- I neglected to
20 mention that. Any new bank accounts or cash accounts that you
21 open you will provide notice to Pretrial Services of the type
22 of account, the financial institution, et cetera.

23 MR. LETKO: Yes, Your Honor.

24 THE COURT: Thank you.

25 MS. DUBAL: Thank you, Your Honor.

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1 THE COURT: Are we done?
2 MR. DuMOUCHEL: Thank you.
3 THE COURT: Thank you.
4 (Proceedings adjourned at about 2:30 p.m.)
5 - - -

6 COURT REPORTER'S CERTIFICATION

7
8
9 STATE OF MICHIGAN)

10) SS.
11 COUNTY OF WAYNE)

12
13 I, Janice Coleman, Federal Official Court Reporter, in and
14 for the United States District Court for the Eastern District
15 of Michigan, do hereby certify that pursuant to Section 753,
16 Title 28, United States Code, that the foregoing is a true and
17 correct transcript of the digital sound recording, transcribed
18 to the best of my ability, which was held in this matter and
19 that the transcript page format is in conformance with the
20 regulations of the Judicial Conference of the United States.

21

22 /S/ JANICE COLEMAN

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24 FEDERAL OFFICIAL COURT REPORTER
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1 DATED: October 7, 2019
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